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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,066	03/01/2002	Thomas Maier	AM200023-00	3220

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KEIL & WEINKAUF  
1350 CONNECTICUT AVENUE, N.W.  
WASHINGTON, DC 20036

EXAMINER

RAO, DEEPAK R

ART UNIT	PAPER NUMBER
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1624

DATE MAILED: 12/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
10/087,066

Applicant(s)  
Maier

Examiner  
Deepak Rao

Art Unit  
1624



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Sep 22, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-20 ☒ are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 10-12, and 15 ☒ are rejected.
- 7) ☒ Claim(s) 2-9, 14, and 16-20 ☒ are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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### **DETAILED ACTION**

Claims 1-12 and 14-20 are pending in this application.

#### ***Election/Restriction***

Applicant's election with traverse of Group I (claims 1-13 drawn to compounds of formula I wherein X is CR<sup>2</sup>), in Paper No. 8 is acknowledged. The traversal was completely responded to in the previous office action (paper no. 9) and the restriction requirement was made FINAL. Applicant's request for reconsideration is acknowledged, however, as explained in the previous office action pyridines (i.e., when X is CR<sup>2</sup>) and pyrimidines (i.e., when X is N) are not art recognized equivalents and the restriction requirement is maintained. (The reasons provided in the previous office are incorporated here by reference.)

Applicant's election of species of first compound in claim 9 is acknowledged. As the elected species was not found in the prior art, the search was expanded to the elected invention of Group I drawn to pyridine compounds.

#### ***The following rejections are withdrawn:***

The rejections under 35 U.S.C. 112, second paragraph of the previous office action are withdrawn in view of the amendments.

The rejections under 35 U.S.C. 102(b) and 103(a) of the previous office action are withdrawn in view of the amendments and/or applicant's remarks.

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*The following rejection is under new grounds:*

***Claim Rejections - 35 U.S.C. § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 10, 11, 12 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Charles et al., WO 00/46184\*. The instant claims read on the reference disclosed compound, see compound 248 in page 42. The reference teaches a method of combating by applying the compound to the locus, see page 10. The reference also teaches process of preparation of the compounds, see e.g., Scheme 6.

*\*Note: Copy of the reference provided with previous office action (paper no. 9).*

***Allowable Subject Matter***

Claims 2-9, 14 and 16-20 are objected to for having nonelected subject matter, but would be allowable if limited to the elected invention of compounds, i.e., wherein X is CR<sup>2</sup>.

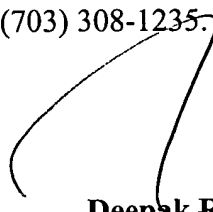
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deepak Rao whose telephone number is (703) 305-1879. The examiner can normally be reached on Tuesday-Friday from 6:30am to 5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Mukund Shah, can be reached on (703) 308-4716. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.



**Deepak Rao**  
**Primary Examiner**  
**Art Unit 1624**

December 15, 2003